

**Board of Forestry and Fire Protection
Title 14 of the California Code of Regulations**

[Notice Published January 16, 2003]

NOTICE OF PROPOSED RULEMAKING

Napa County Rules 2004

The Board of Forestry and Fire Protection (Board) proposes to adopt the regulations described below after considering all comments, objections, and recommendations regarding the proposed action.

PROPOSED REGULATORY ACTION

The Board proposes to amend the following sections of Title 14 of the California Code of Regulations (14 CCR):

<u>§ 946</u>	<u>Napa County Rules [Napa County]</u>
<u>§ 946.1</u>	<u>Definitions [Napa County]</u>
<u>§ 946.2</u>	<u>Assessment Areas [Napa County]</u>
<u>§ 946.3</u>	<u>Special Harvesting Practices [Napa County]</u>
<u>§ 946.4</u>	<u>Retention Standards and Re-Entry Periods [Napa County]</u>
<u>§ 946.5</u>	<u>Log Hauling [Napa County]</u>
<u>§ 946.6</u>	<u>Flagging [Napa County]</u>
<u>§ 946.7</u>	<u>Soil: Timber Operation and Road Construction Debris Deposition [Napa County]</u>
<u>§ 946.8</u>	<u>Performance Bonding [Napa County]</u>
<u>§ 946.9</u>	<u>Hours of Operation [Napa County]</u>
<u>§ 946.10</u>	<u>Tractor Yarding [Napa County]</u>
<u>§ 946.11</u>	<u>Watercourse Mapping [Napa County]</u>
<u>§ 946.12</u>	<u>Domestic Water Supply Protection: Equipment Limitation Zones [Napa County]</u>
<u>§ 946.13</u>	<u>Reduction of Soil Loss [Napa County]</u>
<u>§ 946.14</u>	<u>Domestic Water Supply Protection [Napa County]</u>
<u>§ 946.15</u>	<u>Biotic Resources [Napa County]</u>
<u>§ 946.16</u>	<u>Road Construction [Napa County]</u>
<u>§ 946.17</u>	<u>Design of Drainage Structures and Watercourse Crossings [Napa County]</u>
<u>§ 946.18</u>	<u>Maintenance Period [Napa County]</u>
<u>§ 946.19</u>	<u>Domestic Water Supply Protection: Road Maintenance [Napa County]</u>
<u>§ 946.20</u>	<u>Plan Submittal and Notice of Intent [Napa County]</u>

<u>§ 946.21</u>	<u>Domestic Water Protection: Request for Information [Napa County]</u>
<u>§ 946.22</u>	<u>Contents of Plan: Plan Area Description [Napa County]</u>
<u>§ 946.23</u>	<u>Contents of Plan: Mapping Requirements [Napa County]</u>
<u>§ 946.24</u>	<u>Registered Professional Forester Responsibility [Napa County]</u>
<u>§ 946.25</u>	<u>Notice of Filing: Distribution [Napa County]</u>
<u>§ 946.26</u>	<u>Review Teams to be Established [Napa County]</u>
<u>§ 946.27</u>	<u>Review Period Waiver [Napa County]</u>
<u>§ 946.28</u>	<u>Exemption Form: Mapping Requirements [Napa County]</u>
<u>§ 946.29</u>	<u>Emergency Notice: Mapping [Napa County]</u>
<u>§ 946.30</u>	<u>Emergency Notice: Waiting Period [Napa County]</u>
<u>§ 946.31</u>	<u>Conversion Exemptions: Distribution of Notice of Conversion Exemption [Napa County]</u>
<u>§ 946.32</u>	<u>Conversion Exemptions: Mapping Requirements [Napa County]</u>
<u>§ 946.33</u>	<u>Conversion Exemptions: Project Description [Napa County]</u>

PUBLIC HEARING

The Board will hold a public hearing starting at 9:00 A.M., on Wednesday, March 3, 2004, at the Resources Building Auditorium, 1st Floor, and 1416 Ninth Street, Sacramento, California. At the hearing, any person may present statements or arguments, orally or in writing, relevant to the proposed action described in the *Informative Digest*. The Board requests, but does not require, that persons who make oral comments at the hearing also submit a summary of their statements. Additionally, pursuant to Government Code § 11125.1, any information presented to the Board during the open hearing in connection with a matter subject to discussion or consideration becomes part of the public record. Such information shall be retained by the Board and shall be made available upon request.

WRITTEN COMMENT PERIOD

Any person, or authorized representative, may submit written comments relevant to the proposed regulatory action to the Board. The written comment period ends at 5:00 P.M., on Monday, March 1, 2004. The Board will consider only written comments received at the Board office by that time (in addition to those written comments received at the public hearing). The Board requests, but does not require, that persons who submit written comments to the Board reference the title of the rulemaking proposal in their comments to facilitate review.

Written comments shall be submitted to the following address:

Board of Forestry and Fire Protection
Attn: Christopher Zimny
Regulations Coordinator
P.O. Box 944246
Sacramento, CA 94244-2460

Written comments can also be hand delivered to the contact person listed in this notice at the following address:

Board of Forestry and Fire Protection
Room 1506-14
1416 9th Street
Sacramento, CA

Written comments may also be sent to the Board via facsimile at the following phone number:

(916) 653-0989

Written comments may also be delivered via e-mail at the following address:

board.public.comments@fire.ca.gov

AUTHORITY AND REFERENCE

Public Resources Code (PRC) § 4551, 4553 and 4561 authorizes the Board to adopt such rules and regulations as it determines are reasonably necessary to enable it to implement, interpret or make specific sections 4512, 4513 and 4561.1 of the Public Resources Code.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

As Napa County population continues to grow and dispersal of residential uses and agricultural operations continues its incursion into the County's wildland base, the impacts associated with forestry operations and wildland conversion are having greater influences on the quality of life that makes Napa County unique. Timberland conversions are causing greater and greater controversy in the community.

The Z'Berg-Nejedly Forest Practice Act of 1973, Section 4516.5, provides the opportunity for California counties to apply for additional rules and regulations to the Board of Forestry and Fire Protection (Board) in order to take into account local needs. This section not only establishes the right of counties to apply for special rules but also describes the aspects that can be addressed. The proposed changes to the Forest Practice Rules are in response to a recommendation from Napa County, for local rules addressing the contents of timber harvesting plans, timberland conversion permits, conversion permit exemptions and emergency timber harvesting operations and for the conduct of timber operations permitted by these plans.

To ensure that the County has greater control over forestry operations and timberland conversion, the Napa County Board of Supervisors (BOS) adopted local timber harvest rules on June 10, 2003 as one way to control timberland conversions and forestry operations. The result was a rule package involving changes to thirty-four (34) separate rules to be adopted into the State Forest Practice Rules to cover timber harvest operations and timberland conversions, which do not currently come under the County's enhanced Conservation Regulations.

Several elements associated with Napa County's natural resource base and socioeconomic condition were identified and determined unique to the County and the associated lifestyle these elements afford. These conditions, and their sensitivity to the types of impacts normally associated with forestry-related operations and uses subsequent to timberland conversions, provide the basis for the condition or circumstance the regulation is intended to address. These conditions (addressed as issues) are described below:

- How can we protect the municipal water supply facilities and functioning;
- How do we address potential impacts on the rural residential population; and
- How do we address maintaining high levels of scenic and ambiance levels in support of the tourism industry

These are the issues the proposed local rules are intended to address. To address these issues, the proposed local rules require three types of actions that are additional or enhance existing rules:

1) Provide additional disclosure of the sensitive resources and interaction with timber operations.

§ 946.11, Watercourse Mapping - this rule requires additional watercourse examination and map labeling requirements for timber operations located within a Domestic Water Supply Watershed (DWSW).

§ 946.15, Biotic Resources - this rule requires inclusion of information pertaining to locally unique plant communities, animal species, and sensitive habitats as provided by Napa County, using information contained in the Napa County's Environmental Resource Mapping System.

§ 946.16, Road Construction - this rule is proposed to help lessen the impact of logging roads on resources deemed sensitive by the County and requires a map and explanation of how new road construction proposed within a DWSW or within 200 feet of a DSR is integrated into the existing truck roads for property owned by the plan submitter. The County is also proposing new roads be planned to stay out of Watercourse and Lake Protection Zones, and, for TCPs, the construction of tractor roads or logging roads on slopes of 30% or greater not commence until a use permit or variance has been approved by Napa County.

§ 946.22, Contents of Plan: Plan Area Description - this rule requires additional information on the description of the plan area relative to watershed and drainage names that are consistent with information used by the County to assess any domestic water interactions with the plan.

§ 946.23, Contents of Plan: Mapping Requirements - this rule requires additional specific map details regarding the THP area including detailed mapping of TCPs; preferences for preparation of mapping in digital formats; a series of maps at a detail sufficient to assess site specific impacts on water quality and vegetation cover in DWSRs; mapping of the Designated Scenic Roads (DSRs); location of all watercourse crossings when in a DWSW; and labeling of all watercourses in a DWSW with the annotation "DWS".

§ 946.28, Exemption Form: Mapping Requirements - the rule requires, when operations are exempt from a THP, the plan applicant will provide additional mapping information related to DWSWs and DSRs.

§ 946.29, Emergency Notice: Mapping - this rule requires, before cutting or removing timber on an emergency basis, an RPF submit a Notice of Emergency Timber Operations with additional mapping requirements including where timber operations are within a DWSW, or are visible within 2000 feet of a DSR, and map annotations "DWS" on watercourse classifications and DSRs be identified.

§ 946.30, Emergency Notice: Waiting Period - this rule proposes additional requirements before the Director can waive a waiting period for commencement of timber operations pursuant to an Emergency Notice. The additional requirements include the waiting period shall not be waived when the proposed operation is located within in a DWSW or is visible within 2000 feet of a DSR. In addition, the County is proposing a copy of the Emergency Notice and Notice of Acceptance be sent to the Planning Director.

§ 946.32, Conversion Exemptions: Mapping Requirements - this rule requires specific mapping requirements for conversion exemptions including mapping information at specified scales, mapping locations of DSRs, and mapping the general location of the operations relative to the DWSRs

§ 946.33, Conversion Exemptions: Project Description - this rule requires a statement of intention for conversions, disclosures of actions and needed infrastructure associated with post-conversion operations.

2) Require additional on-the-ground protection requirements and actions.

§ 946.3, Special Harvesting Practices - this rule limits the use of clearcutting and alternative silvicultural prescriptions having the same aesthetic results as the clearcut silvicultural prescription in specific locations (within 200 feet of the high-water mark of a DWSR or within 200 feet of a DSR).

§ 946.4, Retention Standards and Re-Entry Periods - this rule proposes specific harvesting limitations, re-entry period, and leave tree standards where timber operations are proposed in a DWSW to address re-occurring ground disturbance or vegetation reduction.

§ 946.5, Log Hauling - this rule applies time-of-day restrictions for log hauling when necessary to prevent a serious hazard to traffic flow and safety or to prevent hazardous conditions that would endanger public safety.

§ 946.7, Soil: Timber Operation and Road Construction Debris Deposition - this rule requires the locations of the spoil/debris waste deposition areas be identified to ensure that no spoils are placed in areas on properties owned by others.

§ 946.8, Performance Bonding - this rule requires the License Timber Operator (LTO) repair damage resulting from log hauling operations on County roads and appurtenant structures and, if requested, post a financial security in an amount not to exceed the actual damage. Under the rule, if repairs are not made the financial security would be forfeited.

§ 946.9, Hours of Operation - this rule requires restrictions on the operation of power equipment, except licensed highway vehicles, for specific distances from any occupied dwelling during the hours between 7:00 a.m. and 7:00 p.m., and shall be prohibited on Saturdays, Sundays, and state and nationally designated legal holidays.

§ 946.10, Tractor Yarding – this rule requires intervisibly flagging of tractor roads to be used on slopes of 30% or more for timber operations located in a DWSW prior to the Preharvest Inspection and prior to tractor road construction.

§ 946.12, Domestic Water Supply Protection: Equipment Limitation Zones - this rule requires additional equipment limitation zones (ELZ), and post harvest canopy and shrub cover requirements where timber operations occur in a DWSW for any Class III watercourse(s). Additional protection measures may also be required including surface cover retention, vegetation protection, and timber falling limitations.

§ 946.13, Reduction of Soil Loss - this rule requires, for Timberland Conversion Permits (TCP), mineral soil exceeding 100 continuous square feet in size that has been exposed by timber operations be treated for reduction of soil loss in areas that drain toward a DWSW or are within 150 feet of any Domestic Water Supply Watercourse. Additionally, the rule requires soil stabilization treatments for any sized disturbed watercourse crossings area in a Domestic Water Supply Watercourse and all Class I, II, III watercourses.

§ 946.17, Design of Drainage Structures and Watercourse Crossings - this rule proposes design preference be given for drainage structures and watercourse crossings less prone to failures that could result in increased sediment delivery to the watercourse system (such as bridges and rocked fords).

§ 946.18, Maintenance Period - this rule proposes extending the required maintenance period for erosion controls on permanent and seasonal roads and associated landings and drainage structures to three years.

§ 946.19, Domestic Water Supply Protection: Road Maintenance - this rule prohibits the use of oil or salt-based soil stabilizing agents used to stabilize un-paved road running surfaces when timber operations are sited within a DWSW.

§ 946.24, Registered Professional Forester Responsibility - this rule requires the RPF associated with the plan be retained throughout the operations until the Notice of Completion is approved by the Director, and oversee specific activities related to the plan when a plan is located in DWSW.

3) Provide additional notification of the proposed timber operations.

§ 926.6, Flagging of Property Lines - this rule requires flagging of approximate property lines on the site where any truck road, tractor road or harvest area is proposed within 100 feet of a property line.

§ 946.14, Domestic Water Supply Protection – this rule requires the CDF Director to consider mitigation measures where proposed timber operation may degrade a domestic water supply or a Domestic Water Supply Reservoir (DWSR), regardless of the operation’s distance from the DWSR

§ 946.20, Plan Submittal and Notice of Intent - this rule requires the plan applicant to prepare and submit a Notice of Intent to Harvest Timber (NOI) that includes additional specific information about the planned operation, provide additional notification to those near haul routes and timber operation, and additional distribution of the NOI.

§ 946.21, Domestic Water Protection: Request for Information - this rule requires the plan applicant to mail notice by letter to any water purveyor(s) in the DWSW when operations are within the DWSW.

§ 946.25, Notice of Filing: Distribution - this rule requires the CDF Director distribute the Notice of Filing to the County Planning Director and the affected local Water Purveyor(s) if the project is sited within a DWSW.

§ 946.26, Review Teams to be Established - this rule requires a representative of the Planning Department to be part of the THP review team.

§ 946.27, Review Period Waiver - this rule provides an option for the CDF Director to waive or shorten the Review Period time if there are no timber operations or related activities within a DWSW, no timberland conversions operations on slopes greater than 30%, no timber operations are proposed within an ELZ, and no timber operations or related activities visible within 2000 feet of any DSR. Additionally, the rule proposes the

Director may approve the THP immediately (for the purposes of protection of public health and safety, or the environment) but only after consulting with the Planning Director.

§ 946.31, Conversion Exemptions: Distribution of Notice of Conversion Exemption - this rule requires the Notice of Conversion Exemption Timber Operations to be submitted to the Planning Director.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Board has determined the proposed action will have the following effects:

- Mandate on local agencies and school districts: None
- Costs or savings to any State agency: None
- Cost to any local agency or school district which must be reimbursed in accordance with the applicable Government Code (GC) sections commencing with GC § 17500: None
- Other non-discretionary cost or savings imposed upon local agencies: None
- Cost or savings in federal funding to the State: None
- The Board has made an initial determination that there will be no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.
- Cost impacts on representative private persons or businesses: The Board has made an initial determination that there will be minor regional (primarily related to Napa County) adverse financial impacts on a representative private persons or businesses in reasonable compliance with the proposed action.
- Significant effect on housing costs: None
- Adoption of these regulations will not: (1) create or eliminate jobs within California; (2) create new businesses or eliminate existing businesses within California; or (3) affect the expansion of businesses currently doing business within California.
- Effect on small business: None. The Board has determined that the proposed amendments will not affect small business.
- The proposed rules do not conflict with, or duplicate Federal regulations.

BUSINESS REPORTING REQUIREMENT

The regulation does not require a report, which shall apply to businesses.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code § 11346.5(a)(13), the Board must determine that no reasonable alternative it considers or that has otherwise been identified and brought to the attention of the Board would be more effective in carrying out the purpose for which

the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

CONTACT PERSON

Requests for copies of the proposed text of the regulations, the *Initial Statement of Reasons*, modified text of the regulations and any questions regarding the substance of the proposed action may be directed to:

Board of Forestry and Fire Protection
Attn: Christopher Zimny
Regulations Coordinator
P.O. Box 944246
Sacramento, CA 94244-2460
Telephone: (916) 653-9418

The designated backup person in the event Mr. Zimny is not available is Doug Wickizer, California Department of Forestry and Fire Protection, at the above address and phone.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Board has prepared an *Initial Statement of Reasons* providing an explanation of the purpose, background, and justification for the proposed regulations. The statement is available from the contact person on request.

When the *Final Statement of Reasons* has been prepared, the statement will be available from the contact person on request.

A copy of the express terms of the proposed action using UNDERLINE to indicate an addition to the California Code of Regulations and ~~STRIKETHROUGH~~ to indicate a deletion, is also available from the contact person named in this notice.

The Board will have the entire rulemaking file, including all information considered as a basis for this proposed regulation, available for public inspection and copying throughout the rulemaking process at its office at the above address. All of the above referenced information is also available on the CDF web site at:

http://www.fire.ca.gov/BOF/board/board_proposed_rule_packages.html

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After holding the hearing and considering all timely and relevant comments received, the Board may adopt the proposed regulations substantially as described in this notice. If the Board makes modifications which are sufficiently related to the originally proposed text,

it will make the modified text—with the changes clearly indicated—available to the public for at least 15 days before the Board adopts the regulations as revised. Notice of the comment period on changed regulations, and the full text as modified, will be sent to any person who:

- a) testified at the hearings,
- b) submitted comments during the public comment period, including written and oral comments received at the public hearing, or
- c) requested notification of the availability of such changes from the Board of Forestry and Fire Protection.

Requests for copies of the modified text of the regulations may be directed to the contact person listed in this notice. The Board will accept written comments on the modified regulations for 15 days after the date on which they are made available.

Christopher Zimny
Regulations Coordinator
Board of Forestry and Fire Protection

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File: Notice-45 Napa County Rules1_5